IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1784 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT
Versus
MANYO @ MOHAN @ MANOJ BHIKHA SOLANKI & ORS

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Appearance :
MR KP RAVAL APP for Appellant
MR PS CHAMPANERI for Respondents

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/10/2007

ORAL JUDGMENT (Per : HONOURABLE MR. JUSTICE J.R.VORA)

1 Leave to Appeal granted. Appeal is Admitted. Learned Advocate Mr. P.S. Champaneri, waives for the respondents.

2 Instant Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure, against the judgment and order dated 1st of June, 2004, delivered by learned Additional Sessions Judge, Fast Track Court, Camp at Dhrangadhra, in Sessions Case No. 21 of 1999, whereby present respondents, being accused of the Sessions Case, came to be acquitted by the Trial Court for the charges levelled against them under Sections 323, 302 and 34 of the Indian Penal Code.

3 Learned APP Mr. K.P. Raval for the appellant State and learned Advocate Mr. P.S. Champaneri for respondents, requested this Court to hear the Appeal finally at this stage as the Record and Proceedings of the Trial Court is available with this Court and that they would provide extra copies of the evidence recorded during the trial as well as the copies of documents produced before the Trial Court. In the facts and circumstances of the matter, request is granted and the matter is heard finally.

3 As per the prosecution case, the incident occurred during 23rd of December, 1997 and 24th of December, 1997 from 20.00 hours of earlier day to 6.00 hours of the next day. The deceased in the case is one Haribhai Muljibhai Solanki. Accused No.1 and accused No. 2 are brothers and they had suspicion that their sister Ranjanben had illicit relationship with the deceased and, therefore, all the accused to implement their common intention to murder deceased Haribhai, Muljibhai Solanki, deceased was called from his residence and was taken to the sim of village Savlana. He was beaten by the accused and again was brought to his house. Ranjanben, sister of the deceased, inquired from the accused what happened to the deceased and it was explained by the accused that the deceased had a fall. The deceased was thereafter taken in a room and the accused tide rope around the neck of the deceased and he was hanged. A complaint came to be recorded by the Police Sub-Inspector of Bajana Police Station. The complainant Hirabhai Punjabhai Solanki, uncle of the deceased stated that on 24.12.1997 at about 7.00 a.m. when he was at his residence, one Ramjibhai Gandabhai Parmar of Jegari village came on his motorcycle and conveyed to the complainant that the nephew of the complainant Haribhai Muljibhai was not feeling well and had gone sick. The whole family therefore went to village Jegari at about 9.00 a.m. They noticed

that in the house of Muljibhai, brother of the complainant, deceased was lying on a cot and a cloth was covered upon the body. Complainant noticed that Haribhai Muljibhai was dead and had swelling on the face and was bleeding from the mouth, etc. Sister of the deceased and other relatives of the deceased were conveyed by Ranjanben that earlier night accused had come to their house and had taken the deceased with them and after one hour they returned with the deceased to their house. The deceased was not feeling well and accused explained that the deceased had a fall. Thereafter the deceased was taken in a room and in ante room Ranjanben and her sister Ramilaben slept. In the morning when they were awaken and opened the door of the room, they found that deceased was hanging in the said room. He was taken out from the rope and his body was kept on a cot. According to the complainant, Ranjanben further conveyed that Malek Mahmadkhan Muridkhan; Asrafkhan Kesarkhan; Bismillakhan Habibkhan and Dilvarkhan Khanjibhai, etc conveyed to her that accused and deceased had been to bus stand earlier night and had taken pan and thereafter all the five persons had been to the road leading to village Savlana. A crime came to be registered as Crime Register No. I-1/98 and investigation was entrusted to PW-18 Mithabhai Kacharbhai Parmar. He investigated the crime, draw panchnama and recorded the statements of the witnesses. He arranged postmortem of the dead body and attached muddamal and

sent to the Forensic Science Laboratory. A charge sheet came to be filed by this witness against the accused in the Court of learned Judicial Magistrate, First Class at Bajana and was registered as Criminal Case No. 221 of 1998. The learned Judicial Magistrate, First Class, Bajana, committed the case to the Court of Sessions and it was registered as Sessions Case No. 21 of 1999 and the said case was made over to the the Additional Sessions Judge and Fast Track Court at Dhrangadhra. The learned Trial Judge framed charges against all the accused vide Exhibit-5 on 31st of March, 2004. All the respondents – accused pleaded not guilty and, therefore, they were put to trial. Prosecution examined as many as 18 witnesses and produced on record voluminous documentary evidence. The learned Trial Judge thereafter heard the prosecution as well as the defence and came to the conclusion of the above conclusion of acquitting the accused.

4 Learned APP Mr. K.P. Raval for the appellant – State and learned Advocate Mr. P.S. Champaneri for the respondents were heard at length and in great detail in respect of this Appeal.

5 We have gone through the Record and Proceedings of the Trial Court minutely and thoroughly. We have examined the appreciation of evidence undertaken by the Trial Court and the

conclusions arrived at for acquitting the accused. We have also examined the reasons assigned by the Trial Court for the above said conclusion. We have considered the vital features of the matter and reasonable probabilities arising out of the circumstances of the case, particularly with reference to the appreciation of evidence undertaken by the Trial Court and the conclusions arrived at. Both the learned Advocates have taken this Court to each corner of the Record and Proceedings.

6 When we scanned the evidence, we found that PW-1 Abdulkhan Isabkhan, examined at Exhibit-12, is panch of scene of offence panchnama, Exhibit – 30. He has not supported the prosecution case. Second Panch PW-2 Hussainkhan Sigramji, examined at Exhibit-14, also has not supported the prosecution case. Exhibit-16 is arrest panchnama of the accused and panchas of said panchnama are PW-3 Nasibkhan Muridkhan, examined at Exhibit-15 and PW-14 Jethabhai Palabhai, examined at Exhibit-17. Both the panchas have not supported the prosecution case. PW-15, examined at Exhibit-19 Hiralal Punjabhai Solanki is the Complainant though he has not supported the prosecution case. According to the prosecution case, he had no personal knowledge and complaint came to be filed by him from the facts which was conveyed to him by Ranjanben. The fact, Ranjanben

conveyed to him, that the accused had taken the deceased and again brought him to their house and was hanged by the accused in a room, but the said fact has not been stated by him in his deposition and, therefore, he is declared hostile. The complaint filed by him is produced at Exhibit – 20. PW-6 Jethabhai Malabhai, examined at Exhibit-21, is panch of panchnama - Exhibit-22, by which the accused Pama Bijal, Dinesh Bhikha and Jagadish Ramji all the three volunteered before panchas and police to show the place where the deceased was beaten by them. The panchnama was drawn on 9.00 a.m. and was completed at 10.15 a.m. on 5.1.1998. According to the prosecution case, the accused took the police and panch to the place where the deceased was beaten. However, panch of this panchnama i.e. PW-6, Exhibit–21 has not supported the prosecution case. PW-7 Somabhai Hirabhai, examined at Exhibit-26, is second panch of panchnama Exhibit–22 and he has not supported the prosecution case. PW-8 Saikhan Mamadkhan, examined at Exhibit-27, is panch of panchnama Exhibit-28, by which it is the prosecution case that, accused Mohanbhai volunteered before panchas and the police to show the place of offence where the deceased was beaten by them. The panchnama is executed on 21st of March, 1998, but PW-8 Saikhan Mamadkhan, panch of panchnama has not supported the prosecution case. PW-9 Salimbhai Isubhai, examined at Exhibit – 29, is the person who had seen the deceased in

the company of the accused on 23rd of December, 1997 at the bus stand. According to prosecution case, this witness was having a cabin of pan near the bus stand and on the day of incident accused and deceased had taken pan. However, this witness has not supported the prosecution case. He has been cross-examined by the prosecution, but nothing fruitful is extracted from his cross-examination. PW-10 Asrafkhan Kesarkhan, examined at Exhibit-30, is also a person, who had also seen the deceased in the company of the accused on 23rd of December, 1998 near the pan cabin of Salimbhai, but this witness has also turned hostile. PW-11 Dilvarkhan Kesarkhan, examined at Exhibit-31, is also a witness, who had seen the deceased before the incident in the company of the accused. This witness has also not supported the prosecution case. Key witness Ranjanben Maganbhai, examined at Exhibit-32, who informed the complainant that the accused had brought deceased who appeared very sick at that time and thereafter he was taken in a room and was hanged. However, this key witness has turned hostile and stated that she had not stated such facts before the police. PW-13 Laxmanbhai Muljibhai, examined at Exhibit-33, is the person who accompanied the complainant to village Jegari and found that deceased was lying on a cot and that Ranjanben conveyed that how the deceased was taken by the accused and was brought back. However, this witness has not supported the prosecution case. PW-14 Maganbhai Muljibhai,

examined at Exhibit-34, is the witness examined by the prosecution because after the cremation of the deceased, according to this witness, Ranjanben, sister of the deceased, conveyed to them that the deceased had illicit relationship with the daughter of Bhikhabhai and, therefore, accused had taken the deceased with them and was brought back to their house and was hanged in a room. However, the witness did not support the prosecution case even though he was declared hostile and was cross-examined by the prosecution. PW-15 Nanuben Lakhmanbhai, examined at Exhibit–35, is also a person to whom PW-12 Ranjanben conveyed that the accused had taken the deceased and was beaten by the accused. However, this witness has not supported the prosecution case. Like wise, PW-16 Danabhai Punjabhai, examined at Exhibit-36, is also the witness to the fact that Ranjanben had conveyed about the incident to this witness, but PW-16 also did not support the prosecution case. PW-17 Hirabhai Palabhai, examined at Exhibit- 37, was serving as PSO at Bajana Police Station. On 2nd of January, 1998, PSI M.K. Parmar forwarded him the complaint to be recorded at Police Station. He registered the crime and entrusted the investigation to PSI M.K. Parmar. The investigating Officer and last witness Mithabhai Kachrabhai Parmar, examined at Exhibit-38 as PW-18. According to him he arranged the Inquest Panchnama, produced at Exhibit–52 and postmortem note at Exhibit-54. He arrested the accused and after recording the statements

of concerned witnesses and after drawing panchnamas, he submitted charge sheet. The statements of the witnesses before the Investigating Officer is attempted to be proved by the prosecution in chief-examination. He admitted that the complaint was filed after nine days of the incident. He denied that all the panchnamas were prepared in panchayat office. He denied that a false charge sheet came to filed against the accused.

7 This is all is the evidence of the prosecution.

8 From the above evidence and re-appreciating the same, it is clear that there is no iota of evidence against the accused involving them in this crime. Key witness Ranjanben on whose testimony, the whole case hinges, has not supported the prosecution case. Though the prosecution case is categoric that in the presence of Ranjanben, the accused took deceased with them and thereafter he was brought to the house of the deceased and thereafter the deceased was taken in a room and was hanged. According to prosecution case, Ranjanben came to know this fact only in the next morning because they slept outside the room and did not know what happened inside. However, it is the prosecution case that the accused left the deceased in the said room and on the next morning the deceased was found hanging. This case of the

prosecution inherently appears to be improbable and further there is no evidence to connect the accused with the crime as above stated because the key witness Ranjanben has not supported the prosecution case. We have also gone through the postmortem note at Exhibit-54. It is found that the cause of death was kept pending till receipt of the report of chemical analysis of viscera. However, postmortem denotes that there was no evidence of any external or internal injury in the body. According to the report of Forensic Science Laboratory, which is placed at Exhibit-50, no poison was found in any of the muddamal articles forwarded by the Investigating Agency to the Forensic Science Laboratory. Sample bearing Mark-I was the sample of viscera, and according to categoric opinion of Chemical Analyzer, no presence of poison was found in viscera. The learned Trial Judge acquitted the accused because the Trial Court did not find any vital and incriminating evidence against any of the accused. Going through the reasons assigned by the Trial Court and the conclusions arrived at, we find that, the acquittal is based on correct appreciation of evidence recorded during the trial, and in any manner, it could not be said that, the reasons assigned by the Trial Court are perverse or manifestly erroneous. The view taken by the Trial Court is probable and possible from the evidence recorded. This being an appeal against the acquittal, unless and until, it is found that the reasons assigned by the Trial Court are perverse, no

interference is permitted. In this view of the matter, following order is passed :

"Appeal stands dismissed"

(J. R. VORA, J.)

(M. R. SHAH, J.)

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